THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.21887 of 2005

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Dated:07.11.2005

Between:

The Property Association of Baptist Church (P) Ltd., Regd. Office.

95, Vepery High Road, Chennai,
G.D.D. Diwakar R/o. Kavali, Nellore District,

..... PETITIONER

AND

The Municipal Corporation of Hyderabad, Rep. by the Commissioner,

Tank Bund, Hyderabad, and another.

.....RESPONDENTS

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.21887 of 2005

ORDER:

The petitioner assails the letter dated 24.08.2005 of the first respondent refusing and returning the application and plan submitted by the petitioner for construction of cellar, ground + four upper floors in premises No.9-1-169, Sarojini Devi Road, Secunderabad in T.S.No.1,
Block E, Ward No.115 (hereafter called 'the subject property'). The petitioner prays for a declaration and a consequential direction to the Municipal Corporation of Hyderabad (MCH), the first respondent herein, to receive the application along with the plan submitted by the petitioner and pass orders thereon.

In a nutshell, the case of the petitioner is as follows. The subject property (bearing No.39, Oxford Street, Secunderabad) was purchased by Mr.W.W.Cambell and Missionary under a sale deed dated 08.03.1880, which was later transferred to the American Baptist Missionary Society (ABMS) under registered document dated 24.04.1885. ABMS and the petitioner herein appears to have agreed upon a scheme of amalgamation, and the proposal was accepted by the High Court of Judicature,

Madras, in Company Petition Nos.109 and 110 of 1973, vide order dated 03.05.1974. The petitioner, thereafter, is in possession of the property without any interference from anybody.

The petitioner submitted an application to the MCH in August 1981 for construction of the complex, along with a copy of the survey issued by the Special Officer and competent authority of Hyderabad and Secunderabad Urban Agglomeration, under Urban Land (Ceiling and Regulation) Act, 1976. The petitioner also approached the Joint Collector for issue of No Objection Certificate, which was rejected on 12.02.2002. The petitioner, therefore, filed a Writ Petition, being W.P.No.3977 of 2002, before this Court, which was disposed of on 24.10.2003, giving liberty to the petitioner to make an application to the MCH. When the petitioner was also pursuing the other authorities for necessary clearance, it appears, the MCH executed the work of widening the road and the petitioner also was asked to give consent for parting with an extent of 144.66 Square Yards of land, and the petitioner accepted for the same. The petitioner's application was not considered by the MCH, and by a letter dated 24.08.2005, purporting to rely on the letter of the Joint Collector, dated 12.07.2005, the building plans were returned unapproved. The first respondent filed a counter affidavit justifying the impugned letter on the ground that the petitioner addressed a letter to the Joint Collector for regularization, which would show that there is a dispute regarding the title. Therefore, the plans submitted by the petitioner were returned unapproved. It is also alleged that the second respondent by letter dated 12.02.2002 refused to issue No Objection Certificate on the ground that in the revenue records, the name of the petitioner was struck off and the land is classified as a Government land.

The Mandal Revenue Officer, Secunderabad Mandal, has filed a counter affidavit on behalf of the second respondent, *inter alia,* alleging that the premises bearing No.9-1-169 in T.S.No.1, Block E, Ward No.115 is shown as "G" in TSLR i.e., Government land, that the petitioner addressed a letter on 04.12.2004 to the Collector, Hyderabad, in terms of G.O.Ms.No.515 for regularization to the extent of 1356 Square Metres, and that others are also claiming the same property. It is further alleged that the certificate issued by the Special Officer, Urban Land Ceilings, Hyderabad, without verifying the survey records, does not confer any right on the petitioner to claim the title.

Placing reliance on the decisions of this Court in **Hyderabad Potteries Pvt. Ltd v. Collector, Hyderabad District** and **Syed Jalal v. Commissioner, Survey and Land Records, Hyderabad**, the learned Senior Counsel, Sri E.Manohar, submits that on a mere allegation that there is a dispute regarding title, the Commissioner of MCH cannot reject the building permission. He would submit that since 1880 the petitioner or its predecessor in title is the owner of the property, that there was a proposal for widening the road, MCH requested the petitioner alone for consent, which was given, that having come to know that there was an interpolation in the TSLR, where the petitioner's name was struck off and "G" was written, the petitioner made an application to the Collector on 04.12.2004 for regularization of the entry, and the said letter cannot be read as a request for regularization of the occupation of

the petitioner. The petitioner, according to the learned Counsel, is in occupation of the land as rightful owner of the property, and the same cannot be a ground for refusing building permission.

The learned Standing Counsel for MCH and the learned Assistant Government Pleader for Revenue (Assignment) have taken this Court through the counter affidavit filed on behalf of respondent No.1 as well as the counter affidavit filed on behalf of respondent No.2, and submit that when there is a title dispute, the Commissioner was justified in rejecting the permission.

In **Hyderabad Potteries Pvt. Ltd**'s case (supra), the application of the petitioner therein for construction of a multi-storied building was rejected on the ground that as communicated by the Joint Collector, Hyderabad, the land is a Government land. This Court noticed that in the absence of any proceedings initiated by the Government to claim the land, the same cannot be treated as a genuine objection. Further, it was held that the Commissioner is required to make a *prima facie* assessment regarding the title of the person applied for the building permission, and on the ground that TSLR entries show that it is a Government land, the Commissioner cannot decline to exercise his jurisdiction. It was held as under (para 39 of ALT).

> Of course, the Commissioner has to consider the objections, if any, raised for grant of permission. But, an objection raised by a member of the Committee itself would not be enough to reject the application for grant of permission. The Commissioner is required to make pragmatic assessment of the material available on record and decide the question of *prima facie* title and lawful possession of the applicants. The applications for grant of permission cannot be rejected solely on the basis of TSLR entries. After all, the decision to grant permission itself would not confer any title upon the applicant, nor it would take away the rights of the objector (s), whether the Government or any individual, for asserting their right, title and interest in the land in respect of which permission has been granted and dispute the title in any manner known to law. Similarly, the Commissioner is not entitled to decide any disputed questions of title or the ownership. All that the Commissioner required to do is to find out *prima facie* title and lawful possession of the applicant and obviously such consideration is confined to only for the purpose of granting permission and nothing more.

In **Syed Jalal**'s case (supra), this Court followed **Hyderabad Potteries Pvt. Ltd**'s case (supra) and directed the Commissioner of MCH to consider the matter afresh without having regard to the entry made in TSLR. There is no denial before this Court that the law laid down by this Court in the two cases referred to hereinabove also governs this case. I n **Hyderabad Potteries Pvt. Ltd**'s case (supra), the Commissioner was directed to consider the application of the petitioner for grant of permission for construction of the building duly taking into consideration the documents filed by the applicant along with the application for permission. It was observed that the Commissioner cannot reject the application solely on the basis of an objection purported to have been raised by the Joint Collector and that such an application can be taken into consideration along with the other relevant material available on record. This Writ Petition can be disposed of in similar terms.

Accordingly, the impugned order is set aside and the Commissioner, MCH, is directed to receive the application of the petitioner for building permission along with the necessary material to be submitted by the petitioner, and consider the same for grant of building permission in accordance with law keeping in view the observations made by this Court in **Hyderabad Potteries Pvt. Ltd**'s case (supra).

The Writ Petition is accordingly disposed of. There shall be no order as to costs.

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(V.V.S.RAO, J)

07.11.2005

Note: Issue C.C by 09.11.2005.

B/o., vs